

HOUSE ETHICS COMMITTEE

MINUTES

(Approved by the Committee)

July 29, 2010

Capitol Bldg. (Room East Wing 40), Boise, ID

In attendance were Chair Representative Thomas Loertscher, Vice-chair Representative Wendy Jaquet, Representatives Bert Stevenson, Dell Raybould, Rich Wills and Bill Killen. Participating via telephone conference call was Representative George Sayler. Legislative Services Office staff present were Jeff Youtz, Katharine Gerrity and Charmi Arregui.

Also in attendance were: Brian Kane, Assistant Chief Deputy Attorney General; Erick Shaner, Deputy Attorney General, Idaho State Tax Commission; Mr. Dan John, State Tax Commission; Betsy Russell, The Spokesman-Review; Dustin Hurst, IdahoReporter.com; Kyle Grauhn, KIVI-TV (Channel 6); Larry Doss, KBOI Radio; Tara Morgan, media; and Walt Holton, Tom Munds, Jack Stuart, James Tucker, Terry Shepard, Lori Shewmaker, Debra Miller, Teri Nealis, Doug Jones, Mitchell Bengier, James Howard, Christopher A. Pentico, Rod Beck, Todd Hatfield, John Blattler, Fred Riggers, Ryan Davidson, Alan Hart, Fairy Hitchcock, Lucan Baumbach and Nancy Dunlap.

Chairman Loertscher called the meeting to order at 9:02 a.m. and said that the committee was in the process of hearing this ethics complaint, the charge having been clarified at the July 6, 2010 meeting. Roll call was taken. **Representative Killen** moved that the minutes from July 6, 2010 be approved with one correction on page 4, paragraph 4, line 4 to correct “brech” to “breach.” His motion to approve the minutes with that correction was seconded and the motion passed unanimously by voice vote.

Chairman Loertscher welcomed **Representative Sayler** to the meeting via telephone conference call and addressed the first agenda item for discussion, Section 7, Article III of the Idaho Constitution regarding Privilege from Arrest. In reviewing the documents forwarded to committee members by **Mr. Kane**, Assistant Chief Deputy Attorney General, **Chairman Loertscher** emphasized that there is currently a live court proceeding on this very issue and, as it pertains to this particular item in the complaint, it is valuable to note that, no matter what the involvement is as an Ethics Committee, there be no interference with this ongoing court case. He asked the members to be extremely careful in not looking at issues having to do with that particular part of the complaint, so as to not cloud the outcome one way or the other.

Chairman Loertscher invited discussion of any potential conflict that may have arisen out of House Rule 38 regarding Conflict of Interest. **Mr. Kane** had provided the committee members and **Representative Hart** a packet of information prior to the meeting which is available in the Legislative Services Office. Included in this packet was information on what occurred during the

2010 legislative session with regard to **Representative Hart** at no time invoking Rule 38. **Representative Killen** said he did review the documents, adding that he did not see any reference to actions by the rules subcommittee. **Mr. Kane** referred to Tab 13 in the packet, excerpts from the House Revenue & Taxation Subcommittee Minutes, and the rules discussion is within those minutes. **Representative Killen** asked if he was mistaken about assuming these minutes were from the full committee, not the subcommittee. **Mr. Kane** answered “no” (he was not mistaken,) adding that they did not have proceedings from the subcommittee. *

Representative Saylor asked **Mr. Kane** a question regarding Rule 501, when **Representative Hart** recommended approval, indicating his case was past that point and at the point of appeal. **Representative Saylor** asked for clarification regarding at what point Rule 501 would apply or be relevant. **Mr. Kane** said this question would best be addressed by the State Tax Commission, adding that another key to remember in analyzing these issues is that even though a rule may potentially impact **Representative Hart**, in the conflict analysis one must also ask the question if it is impacting **Representative Hart** as a discreet group of individuals or is it impacting **Representative Hart** as a member of the entire class of taxpayers; the question is in what way does it impact him to require a Rule 38 disclosure. He pointed out that the State Tax Commission could better address what can be discussed, without breaching any confidentiality requirements.

Mr. Dan John, State Tax Commission, clarified that if **Representative Hart** were to prevail in his tax appeal at the Board of Tax Appeals, there would not be an issue with that rule, and he would not owe the tax that has been asserted.

Representative Jaquet asked **Mr. John** to give a time line on the temporary rule considered and then adopted last session. **Mr. John** said that during the 2009 session there was some review of the procedures used by the Tax Commission in settlement agreements and then the statute was modified. The Tax Commission was directed to draft rules dealing with that, and an emergency rule went into effect and then permanent rules 500 and 501 were brought to the 2010 session dealing with settlements of tax cases mainly in excess of \$50,000. **Representative Jaquet** asked if **Representative Hart** met with the Tax Commission in the drafting of the rule. **Mr. John** said he did not believe there was any interaction with **Representative Hart** until the rules came before the subcommittee.

* Per Mr. Kane, both committee and subcommittee minutes were, in fact, included, and this appears to be a mistake admittedly made by him. He was not sure it was clear that both committee and subcommittee minutes were included or delineated within the packets as to which minutes were which.

Representative Jaquet asked **Mr. Kane** about House Bill 454, sponsored by **Representative Hart**, to delete income tax on wages and salaries and to increase the rate of sales tax; she inquired as to the path of that bill, was it from a committee or a personal bill? **Mr. Kane** responded that research revealed that HB 454 was a personal bill, having searched through committee minutes and not seeing a print hearing, which is consistent with procedure in the House for personal bills; HB 454 did not ever receive a committee hearing.

Representative Killen addressed **Mr. Kane**, saying that having done some “lawyering” in the past, he was always of the view that whatever decision was made was based on a group’s rules and standards; whatever happens in the courts is based on the court’s rules and standards, asking if decision making would be binding on the Ethics Committee and vice versa. **Mr. Kane** answered that, within the circumstance described, that is correct; however, the Legislature is a bit different. The reason why is that this would be construed as a legislative interpretation of a rule governing the legislative body, so the likelihood of a court being influenced by the Legislature’s interpretation of its own governing provision is much more likely than say, in the case of a school district which is dealing with what he would call concurrent proceedings. He said that is why the reticence is here to directly take on this issue. He noted that the full briefing on this issue is in the committee’s packets. He said that it appears that both sides have adequately represented points of view on it; he reminded the committee that at the July 6, 2010 meeting of the Ethics Committee, he cautioned that when there is a constitutional provision that gives one the right to assert something, it’s very difficult to then put a limit on how many times one can assert that right. If someone is privileged from arrest during the legislative session, if for whatever reason the Tax Commission decided that they only wanted to come after **Representative Hart** on his tax issue during the months of session instead of during the summer, that is an odd circumstance, but he didn’t think the Constitution allows for that to be limited in that case, and that goes to the nature and essence of why that constitutional provision is there.

Chairman Loertscher addressed the next agenda item as a review of **Representative Rusche’s** written complaint. **Representative Raybould** said that in reviewing the letter from **Representative Rusche**, he believes the second paragraph to be the center of the complaint filed and added that he believes that complaint to be extremely vague, especially the words “Based on recently disclosed information . . .” **Representative Raybould’s** question was: “what information?” Also troubling, he said, was the next sentence: “In addition, as **Representative Hart** serves on the tax policy committee while at the same time appearing to attempt to set aside tax law and obtain personal financial benefit, there is at the least a perception of a conflict of interest which has not been acknowledged as required by House Rule 38.” **Representative Raybould** again emphasized “nothing specific” in this complaint as to what information this is based upon or what personal financial benefit **Representative Hart** attempted to gain by not invoking House Rule 38. If someone could give the committee specifics of what was alleged to have been breached by **Representative Hart**, he believed that could be a basis on which the committee could proceed.

Representative Jaquet said she was not prepared for this question, but did state that the two items she questions are worrisome, i.e. participating on a temporary rule that may not directly affect **Representative Hart** but has the appearance of being a conflict and, secondly, the personal bill, although no public hearing was held, still must have had conversations with leadership regarding this bill and, again, has the appearance of a conflict. She believes that the issue the Minority Leader may be dealing with is suggesting that there has been much media speculation with regard to the supposed actions of **Representative Hart**. She believes that legislators have an obligation to make sure that the legislative body represents what is good about Idaho and that legislators follow rules and don't break laws. **Representative Jaquet** believes this committee was formed to determine whether there are issues that the Legislature should consider with regard to the actions of **Representative Hart**, rather than being tried in the media. She said that perhaps Rule 38 needs to be invoked more often, adding that it is hard for a legislator to distinguish between what is a discreet group or class and where a legislator directly benefits. These particular bills indicate that **Representative Hart** does possibly have some issues with the state, the federal government and even Wisconsin. **Representative Jaquet** thinks that constituents would like to see legislators held to a higher standard. Some constituents are concerned that **Representative Hart** is following the appeals process, but may be using his ability as a legislator to possibly further his agenda and participate in a manner deemed inappropriate by some.

Chairman Loertscher said that if **Representative Jaquet** were speaking about HB 454, a personal bill, which did not even have an introduction hearing, he asked what venue would **Representative Hart** have declared Rule 38. **Representative Jaquet** said she did agree with **Chairman Loertscher**; however, she believes that conversation usually takes place with leadership for personal bills, and that legislators are here for the public good and not here to further their own agendas. She referred to a silver bill, which did reach the House floor, on which there was a question as to whether **Representative Hart** had ownership in a company that was marketing liberty dollars and **Representative Hart** did not indicate that there was a relationship with folks involved with marketing of the silver dollars. She believed that it might be beneficial to deal directly with the agenda items and to directly ask **Representative Hart** to clarify some of these issues so that the committee members could feel more comfortable, especially after the media articles. She believes the Legislature has the obligation to decide if the disturbing media reports reflect on the entire Legislature, or if these reports reflect only on **Representative Hart**, and if his behavior is acceptable.

Chairman Loertscher said that he didn't believe any legislator had a personal agenda; as legislators approach issues, some they are passionate about, no matter what that issue might be, he was not sure that would require disclosure of Rule 38. **Chairman Loertscher** invited **Representative Hart** to clarify questions about HB 454 and also the silver bill, HB 633.

Mr. Starr Kelso, attorney, said he would respond on behalf of **Representative Hart**. With regard to HB 454, **Mr. Kelso** stated that bill was printed and was not submitted to a committee for a vote and was not considered to be part of any official action. Rule 38 specifically requires a

vote for there to be a conflict of interest declaration, so there is no basis, reason or time for a conflict of interest to be raised. With regard to the silver bill, HB 633, he said that **Representative Hart** did have some involvement with a group that ended in 2006; he totally severed any and all relationships with that group after that time and had no interest any different than anyone else representing the matter.

Representative Killen asked **Mr. Kelso** for clarification on HB 454, obviously having been printed since it had a bill number, asking if this was a personal bill or if it had a print hearing. **Mr. Kelso** answered that HB 454 was a personal bill and had no print hearing.

Representative Jaquet referred to Tab 10 in the packet, Motion for Extension of Time to Respond to Respondent's Motion to Dismiss Pursuant to Tax Appeal Rules 72 and 21, before the Idaho Board of Tax Appeals, and the words "This issue is being considered by Idaho's legislative leaders at this time and their input into this question is necessary." She asked **Mr. Kelso** to respond to exactly what was happening there. **Mr. Kelso** responded that the issue involved is a constitutional issue, the question with regards to immunity from any civil process. He said that in the research, interpreting what that language means, the Alaska Attorney General issued his formal opinion as far back as 1959, paraphrasing: "The individual legislator is immune from civil process and cannot waive immunity. This is not a privilege, it is an absolute requirement. The purpose is that the interest of the public, of a legislator's constituents is deemed greater than the interest of a specific legislator in expediting personal matters. It is the interest of the public, of a legislator's constituents that is deemed greater than any other person or entity, that person or entity that would attempt to draw the attention of the legislator away from the people's business for the specific period of time, commencing ten days before the session, through the session. It is the opinion of the Alaska Attorney General that there is, in fact, an absolute constitutional requirement based upon the public policy that legislators are here to serve the public and shouldn't be sidetracked." He gave an example of a vote on a highly controversial issue, it is not beyond the realm of possibility to think that opponents would have subpoenas issued on various members to attend depositions, the question is are we going to be focused on the court issues before the people of the state of Idaho or are we going to be focused on ancillary issues or personal issues, that being why the specific time period is there. The issue with regard to the question before the legislative leaders was **Mr. Kelso's** issue because, upon considering that fundamental requirement, that wasn't something that could be weighed; he felt that the legislative leadership should stand up and make a point whether that is through a legislative attorney or through the Attorney General. In fact, what **Mr. Kelso** believes has occurred in this matter is that the Attorney General, in the documentation provided the committee members, indicates that on page 2 of 4, second to last paragraph, there is no legal limitation on the proper use of Section 7, Article III. Based upon the briefing and the posture of the proceedings, it appears the legal interpretation and application to Section 7, Article III, in this situation, is being addressed appropriately. **Mr. Kelso** said that is the only reason that comment was there was that he was in a district court case in Kootenai County involving taxpayers against North Idaho College and the North Idaho College Foundation for purchasing a \$10 million piece of property without the vote of the people and that is obviously a very sensitive matter, so that is why he requested more time to submit it.

Representative Jaquet wondered how **Mr. Kelso** contacted legislative leadership and asked them to assist him on the request for this appeal. **Mr. Kelso** said he did not personally contact any legislator; he was attempting to find out how to do that. **Representative Jaquet** asked again about the words “This issue is being considered by Idaho’s legislative leaders . . .” and if **Mr. Kelso** had, in fact, contacted legislative leaders asking them to assist him in this matter. **Mr. Kelso** replied that the issue was raised by **Representative Hart** to, he believes, the Speaker, who asked **Representative Hart** whether or not that was an issue that the Legislature as a body wanted to consider, and that response was being awaited, and **Mr. Kelso** stated that, to his knowledge, there was no response. **Representative Jaquet** asked if that response was requested in writing by **Representative Hart** or was that a verbal conversation while still in session, since the Motion for Extension of Time to Respond is dated May 24th. **Mr. Kelso** answered: “It would have been right at that moment, it would have been probably the day of or the day before the date signed.” **Representative Jaquet** asked if there was a verbal conversation between the Speaker and **Representative Hart** and nothing in writing. **Mr. Kelso** said it was his understanding it was a telephone call saying that there is an issue under Section 7, Article III with regard to immunity from any civil process. He said that the Alaska Attorney General has said it is mandatory and we should understand whether or not the leadership of the House believes that that is an issue the House should address. **Representative Jaquet** asked if **Representative Hart** talked to the Speaker, and if he asked the Speaker to intervene or to try to take this up. She was trying to understand if **Representative Hart** wanted the Speaker to go to the Tax Commission, and she asked for more information about this. **Mr. Kelso** said that she needed to understand the framework of this matter. There was a Deputy Attorney General representing the Tax Commission who filed the motion to dismiss before the appeals. **Mr. Kelso** thought that the Attorney General’s primary responsibility should be to the Idaho Legislature and legislators, so the question was, shouldn’t the Attorney General be defending a legislator and members of the Legislature; that was the issue, and there was never any question about talking with anybody, and **Mr. Kelso** said he took exception to that. **Representative Jaquet** thanked **Mr. Kelso** for that clarification.

Representative Killen stated that based on some of the motions in the packet, would it be fair to say that the Idaho Attorney General is not in agreement with the Alaska Attorney General on how to interpret the Idaho Constitution. **Mr. Kelso** said that actually wouldn’t be fair; if one refers to what **Mr. Kane** has stated, he says that there is no legal limitation on its proper use.

Representative Killen said that the word “proper” would qualify that and **Mr. Kelso** replied “correct” but added that in the sentence prior to that **Mr. Kane** indicates that it appeared that the legal interpretation and application of Section 7, Article III in this situation is being addressed appropriately.

Chairman Loertscher commented that there was one other piece of legislation needing clarification, that being House Bill 436, asking **Mr. Kane** if HB 436 was addressed at all in his communications. **Mr. Kane** referred to Tab 13, Feb 4, 2010 , and he passed out HB 436, a copy of which is available in the Legislative Services Office. **Mr. Kane** deferred to Deputy Attorney General, **Erick Shaner**, or **Dan John**, Idaho Tax Commission, to discuss specifics of this bill and how it impacts **Representative Hart**, but **Mr. Kane** said it appears to be one of those issues

that is worth an inquiry by the committee to the Tax Commission as well as **Representative Hart** with regard to whether Rule 38 should have been invoked.

Mr. Shaner said that HB 436 deals with statute of limitations for filing a return and HB 436, which is actually Idaho Code 63-3072(k), refers to the time someone who failed to file an income tax return would be able to file a return to address the years in which they did not file. That's relevant in that the decision concerning **Representative Hart**, in which he has appealed the years 1996, 1997, and 1998, alleges that he did not file income taxes, so this particular legislation would have affected his ability to address those particular years with a subsequent filing of a return on his behalf.

Chairman Loertscher asked how it would have affected **Representative Hart** had HB 436 gone forward and passed. **Mr. Shaner** answered that if HB 436 had passed, **Representative Hart** would not be able to file subsequent returns for those years. **Chairman Loertscher** asked what the effect would be. **Mr. Shaner** responded essentially the difference between the decision standing on its own, or he being allowed to file. He said that what happens sometimes in the process of the Tax Commission is to send out a notice of deficiency to someone indicating they did not file a tax return for a given year and, if that decision is appealed, the Tax Commission writes a decision indicating whether or not taxes were owed for that year. The way it's set up, there is still a question of law, even after the Tax Commission issues that decision. The way the law now stands is that the taxpayer can still come back and file a tax return and make the Tax Commission go back and readdress the issue on which they had already issued a decision. That also applies on whether or not there is a hearing by the Board of Tax Appeals or a district court. **Chairman Loertscher** asked if this was a common occurrence by taxpayers, and how Rule 38 would relate to HB 436. **Mr. Shaner** said if his question had to do with the number of people who do not file tax returns in the state, there are no statistics available on that number. **Chairman Loertscher** stated that HB 436 failed to come out of committee on a tie vote. **Mr. Shaner** said that was his understanding.

Representative Jaquet asked **Mr. Kane** to give the committee legislative history on HB 436. **Mr. Kane** said that HB 436 wound up remaining in committee based on that tie vote, as the minutes in the packet reflect, and **Representative Hart** and others participated in that vote. **Representative Jaquet** asked if HB 436 was brought forth by the Tax Commission. **Mr. Kane** said that **Dan John** and Deputy Attorney General **Ted Spangler** sponsored HB 436.

Representative Killen asked **Mr. Shaner** about a hypothetical situation in which a deficiency goes before the Board of Tax Appeals and a person loses and then appeals; the result of that appeal, if favorable, isn't necessarily black and white in the sense that the person owes nothing but may be a remand to consider something overlooked. **Mr. Shaner** said if a taxpayer appeals and wins, usually the case is over, and becomes a moot point at that time. **Chairman Loertscher** asked if the statute of limitations would prevent that person from going back and filing a return if they did prevail. **Mr. Shaner** said if the person wanted to, if they prevailed, arguably they could go back and file another return. **Chairman Loertscher** asked if this potential change in law in HB 436 would have changed the outcome in a person being able to go back and file. **Mr. Shaner** answered "yes, depending on the year."

Chairman Loertscher asked if **Mr. Kelso** would like to respond to the HB 436 issue. **Mr. Kelso** answered that he was referring to HB 436 as HB 383, since both numbers were in the language. He said that all the following points are important: (1) HB 436 applies to all Idaho taxpayers; it was a Tax Commission bill. **Mr. Kelso** said he asked **Mr. Shaner** specifically if the purpose of the Tax Commission putting forth this bill was to address **Representative Hart** and the answer was, “of course not, there are a number of people with situations like this.” Additionally, **Mr. Kelso** pointed out that the committee is perhaps being led astray with regard to what this particular piece of legislation does, referring to page 2, lines 46-49. He said HB 436 does not have to do with the filing of a tax return; it has to do with making a claim for a credit or refund. **Mr. Hart** probably would say to this committee that he wished he was in a position of asking for a refund; this does not apply to him at all.

Representative Raybould reiterated that the situation the committee was in is that there is a multiplicity of bills that pass through the House and Senate that any particular member may be a sponsor of or vote on. He questioned what constitutes a conflict of interest with legislators. According to the Attorney General’s opinion before the committee, he said that it is generally **not** considered a conflict of interest if it’s an action in the person’s official capacity which would affect to the same degree a class consisting of an industry or occupation group in which the person or member of the person’s house or business with which the person is associated is a member or is engaged. **Representative Raybould** believed that the committee had to be careful in singling out particular pieces of legislation that **Representative Hart** may have been involved with unless it pertains to him only; if it pertains to anyone else or any class of people that would benefit in a like manner of that which the member sponsoring or voting on it would achieve, he said they needed to be careful or there wouldn’t be anyone involved in a legislative capacity except people who don’t have families or jobs. He expressed appreciation for the clarifications brought forth by the Tax Commission and **Mr. Kelso**. The committee needs to be careful in ascertaining whether any piece of legislation or any act committed by **Representative Hart** was for his own personal benefit and no other. **Chairman Loertscher** said that this is what this discussion is about - should House Rule 38 have been invoked with regard to HB 436?

Chairman Loertscher addressed the next agenda item, **Representative Hart**’s response. **Representative Killen** said he wasn’t sure that the letter dated July 14, 2010 in Tab 6 of the packet was the official response, but rather an inquiry from **Representative Hart** asking if there would be additional data. **Mr. Kane** clarified that the letter from **Representative Hart**, as well as the “Answer” from **Mr. Kelso** were both under Tab 6 in the packet.

Representative Killen then referred to the document captioned “Answer of Representative Phil Hart” signed by **Mr. Kelso** saying that in his denial of the first allegation, **Mr. Kelso** stated: “. . . All rulings regarding Mr. Hart in all proceedings before the State Tax Commission were made by the State Tax Commission in his individual capacity and not as a member of the Idaho House.” **Representative Killen** commented that this seemed to be a puzzle to him because, in fact, one issue was his capacity as a legislator and whether or not that capacity and the constitutional provision would produce something different than if John Doe were in a similar situation, asking for clarification on why **Mr. Kelso** thinks there was no action taken in his legislative capacity. **Chairman Loertscher** again cautioned the committee members that there was a live court

proceeding, that this issue needs to be approached with sensitivity, and asked **Mr. Kelso** if he wanted to respond. **Mr. Kelso** said that the point being made is that the State Tax Commission makes rulings with regard to **Mr. Hart** as a citizen; the issue with regard to Section 7, Article III has to do with the time period in which **Mr. Hart** could file the appeal, which was into the ten-day period prior to the beginning of the legislation session; it wasn't an issue, he said, with regard to **Mr. Hart's** taxes but rather with the appeal time to file the appeal. **Representative Killen** asked if it was not true that, in fact, one of the issues being presented and presumably will be decided is the invocation of that immunity or privilege to expand or alter the time for appeal. **Mr. Kelso** pointed out the undated complaint letter from which issues were gleaned that states that **Representative Hart** had attempted to use his position as a member of the Idaho House to obtain special treatment from the Idaho Tax Commission. The Section 7, Article III issue is before the Idaho Board of Tax Appeals; in fact, the Tax Commission is the adverse part, essentially, in that proceeding, so it wasn't something with regard to the Tax Commission's rulings with regard to **Mr. Hart** and taxes. That matter is in front of the Board of Tax Appeals; therefore, that is where that is framed, in response to the allegation, the Idaho Tax Commission, in the complaint.

Chairman Loertscher moved to the next agenda item, additional comments and testimony from **Representative Hart**, and said that he assumed **Mr. Kelso** would be speaking on his behalf. **Mr. Kelso** congratulated the committee members for having been chosen by leadership to be on this Ethics Committee, saying there was no higher recognition possible, he believed, for members of the Legislature to be chosen on an Ethics Committee, showing great respect for their decision-making abilities. He said that with that great honor comes great responsibility to the members of the House and to the citizens of the state of Idaho and to **Representative Hart**. In looking at this matter, he said that Section 7, Article III had been touched upon, and the totally appropriate use of that at this time and that other issues had been touched upon and that there was no claim of any personal legislation voted upon under Rule 38 that **Representative Hart** participated in that would have impacted him as opposed to anybody else in the class of taxpayers. He concluded by pointing out that it takes courage on the part of any individual to stand up for what they believe, and he said that was true of **Representative Hart**. He said he stood up for what he firmly believed. Having said that and having stood up for it, he said that every act of courage does not go unpunished; he said that is the stage right now where we were at and **Representative Hart** is seeing the result of having had the courage to stand up. He pointed out to the committee that a vote by this committee to dismiss the charges against **Representative Hart** would not be a statement by any member of the committee that they agree or disagree with anything **Representative Hart** has done with regard to his personal tax issues. In fact, he said that as soon as the vote to dismiss is taken and, if the vote is to dismiss, the members can say in the next breath that they disagree with what **Representative Hart** has done or agree; that is not the issue. The issue before this Ethics Committee, he said, is whether or not **Representative Hart** committed a violation of the House ethics; in fact, it is a narrow issue whether there is probable cause that he did so. **Mr. Kelso** believes that the committee has gone through questions and answers and that there is, in fact, no probable cause, even though clarification was sought from **Representative Rusche**; none came forth. **Mr. Kelso** said that **Representative Hart** has responded fully and completely and there is absolutely no basis for the committee, he respectfully submitted, to find any probable cause that **Representative Hart** violated any ethical obligation of the House.

Chairman Loertscher invited further discussion. **Representative Jaquet** asked if **Representative Hart** would answer any questions or if **Mr. Kelso** would be answering for **Representative Hart**. **Mr. Kelso** answered that in the nature of a probable cause matter based upon the documentation and evidence before the committee, that **Mr. Kelso** would be answering questions. If there is a finding of probable cause based upon the record, and a matter proceeded to a hearing involving subpoenas, testimony and cross-examination, that would be something else; **Mr. Kelso** said they were here today on a simple, clear issue of a question of law based upon a ruling, similar to a motion to dismiss.

Representative Jaquet commented that her issue still has to do with the credibility within the House and how constituents have brought up issues; she said it was her understanding that, with regard to the federal tax issue, **Representative Hart** actually accessed some of the withholding from employees, asking if that question could be answered. **Chairman Loertscher** interjected that that matter was not the charge of this committee or part of the complaint. **Representative Jaquet** asked for advice from **Mr. Kane**, expressing her concern that the complaint was not dealing with just Rule 38, but rather personal, financial benefit, and her concern is a more global feeling that some of the actions by **Representative Hart** have tarnished the reputation of the House. **Mr. Kane** clarified that this actually is one of the core issues before this committee; what is the standard of conduct to which you hold each other as fellow members, under what circumstances do you, as members, require each other to disclose under Rule 38, keeping in mind that Rule 38 is incredibly lenient. **Mr. Kane** referred to Tab 15, an index of all of the Rule 38 disclosures; he said that significant within that were twenty-six Rule 38 disclosures and only three times was a member excused from voting. **Mr. Kane** said that the key for the committee is to determine the conduct of each other and at what point a conflict arises to the level where you expect one another to disclose under Rule 38.

Representative Jaquet explained that she was especially sensitive to this issue since her husband was taken to court on a similar issue with regard to her position as a Chamber of Commerce Director in Ketchum. Prior to that, there were issues in another state in writing a neighborhood facilities application that ended up being a large facility grant award and whether it was a conflict between where her husband worked and where she worked. Consequently, she admitted to being more sensitive with regard to this issue and to the House, due to her experience. She questioned whether **Representative Hart** should be on the House Revenue and Taxation Committee because of the history that **Representative Hart** is still dealing with, with regard to tax matters. She said that, because of her history, she would invoke Rule 38 to reveal there was something close to her involving this issue, perhaps more so than other members of a committee or everyone else in the Legislature. When she looks at the issue of possibly accessing employee withholdings, the Wisconsin judge who indicates that appeals or contesting paying taxes there was groundless, frivolous and a waste of state resources, and the amount of time that **Representative Hart** has taken in these appeals, she has to agree with that Wisconsin judge; we have a representative who is not paying his taxes and her constituents are paying their taxes. She believes there is a conflict with **Representative Hart** being a member of the House Revenue and Taxation Committee. **Representative Jaquet** thinks that **Representative Hart** should not be on that committee due to the appearance of a conflict that he brings to the table and the issues he has not resolved. She asked if **Mr. Kelso** would like to respond to her comments.

Mr. Kelso addressed the issue of employee withholdings; he clarified that the employee withholdings pertained to one particular employee, deemed by the taxing entity, that one particular employee being **Representative Hart** himself; he claimed that he was not an employee and did not have to retain the withholding. **Mr. Kelso** emphasized essentially there was no impact on any person at all; it was a simple matter of whether or not **Representative Hart** was his own employee. He wasn't a professional, but he was operating under the professional corporate entity in which he was doing business, as opposed to being a professional in and of himself, that was the issue. With regard to the alleged conflict of being a member of the House Revenue and Taxation Committee, **Mr. Kelso** said that that is a political issue and has nothing to do with the issue of a legal conflict of interest, and he did not believe the two issues should be discussed in the same breath. One involves charges and sanctions of a formal nature, and one involves the political process, which is where it belongs.

Representative Saylor said that there is an expression that perception is reality, saying that people behave accordingly so as to not create a wrong perception; in this situation, for the most part the perception is that **Representative Hart** has behaved inappropriately and perhaps there is no specific act, but rather a pattern of conduct, a pattern of actions regarding taxes on all fronts that seems to be of concern. **Representative Saylor** believes that their credibility as a Legislature is involved, as well as **Representative Hart's** own credibility, and he said people wonder why **Representative Hart** delayed and why he didn't file the appeal before the ten-day period. He asked for some response to that issue; why can one use the privileges clause to seek delays and why not just get them done? Is **Representative Hart's** conduct appropriate, whether or not there are specific instances that can be pinpointed to be a violation of Rule 38? He believes that a broader issue is being dealt with; how is the perception to the public explained when a member is misbehaving or behaving inappropriately as a legislator? How is that legislator protected and, at the same time, the Legislature protected?

Mr. Kelso replied that the issue raised is one of general perception of conduct. The next person who is going to have a question raised is the business person who is a member of the Legislature; maybe that person laid off ten employees. Is that a good business decision or a bad decision; is it viewed favorably or unfavorably? He asked if we are going to be involved in the rules and laws of our country when they do not impact the legal parameters of the Legislature; he does not believe the Legislature wants to go there. The remedy for issues raised by **Representative Saylor**, he believes, is the remedy at the ballot box; if constituents are concerned and have issues, they vote. If constituents support issues raised by **Representative Hart**, they vote for him; he said that is not an issue for this committee to consider.

Representative Killen asked **Mr. Kane** about **Mr. Kelso's** reference which he did not perceive as necessarily at issue here, that being that he emphasized several times the phrase "probable cause." **Representative Killen** said he was very familiar with that phrase in the setting of criminal law, having been a prosecutor and defense attorney for a number of years. However, he said that in reviewing the committee's role and charge, he failed to see that is a standard or how that applies to this committee, asking if that was incorrect. **Mr. Kane** responded that **Representative Killen** was not incorrect, adding that this committee is charged with making a recommendation to the full House body when it reconvenes in January 2011, so whatever conclusion is reached by this committee with regard to **Representative Hart**, whenever that conclusion is reached, will take the form of a recommendation to the full House.

Mr. Kelso responded that he was looking at the House rules with regard to House Rule 76 on the Committee on Ethics, subparagraph 2, “The committee shall notify the person against whom the complaint was brought and shall provide such person a copy of the complaint. The person complained against may submit a written answer to the committee. The committee shall make a preliminary investigation of the complaint. If, after investigation, the committee determines no violation has occurred, the complaint shall be dismissed. If, after investigation, the committee determines probable cause exists that a violation may have occurred, the committee shall so notify the person complained against.” He said thus the words “probable cause.”

Representative Jaquet asked **Mr. Kane** to respond to that comment. **Mr. Kane** stated that is accurate; however, if the committee were to redo this, essentially the committee would be redoing everything already done. He said that there is no other legislation out there, so this committee has taken on what he considers to be a combined proceeding. There was the initial July 6, 2010 meeting and then a response was sought from **Representative Hart**, he being represented here by counsel. One of the difficulties in this circumstance is the vagueness of the complaint that was brought. To some extent, he said, this committee has had to engage in what he termed a “fishing expedition” to locate and find exactly what legislation is at issue, and he believed the committee had done a good job of identifying those pieces of legislation and rule dockets that are at issue. **Representative Hart** has appeared and, represented by counsel, responses were made to inquiries by the committee. To that extent, **Mr. Kane** said he would look at this meeting as more of a summary proceeding, which is consistent with the rules. Again, given that this is a legislative proceeding, the committee sets its rules and regardless of what the committee finds, it comes out merely as a recommendation to the full body. It is then up to the full House to make the actual determination as to what occurs.

Representative Jaquet inquired about the time line with regard to the constitutional issue and when that might be resolved. **Mr. Kane** stated that he believed the issue has been fully briefed and that a decision is being awaited, accompanied with an opinion.

Representative Jaquet commented on **Mr. Kane**’s reference to the complaint being “vague,” stating that part of the problem is that the committee can’t deal with part of the complaint due to the constitutional issue regarding Legislative Privilege that was raised. **Representative Jaquet** was bothered by the first part of the complaint with regard to having to wait for that decision and possibly an appeal. Her concern in the first part of the complaint is that constitutional issue possibly having been used over and over again. It seemed to her that **Representative Hart** had time to file the appeal. This is one of the issues that has made her personally uncomfortable. **Representative Jaquet** asked if **Mr. Kane** could review actions that the committee could take.

Mr. Kane said that the committee has four options available, recommendations to be made to the full House:

- (1) Recommendation to dismiss all charges;
- (2) Recommendation to reprimand;
- (3) Recommendation for censure;
- (4) Recommendation for expulsion, with the Constitution then again taking over, requiring 2/3 vote.

Mr. Kane added that certainly the committee could attach to its recommendation for any of the sanctions such further recommendations as it sees fit, keeping in mind that the House is not bound to fully consider those. For example, he said that if the committee wanted to recommend dismissal of all charges and remove **Representative Hart** from a certain committee or committees, they could make that recommendation; however, the body is not bound by any of those types of recommendations. He stressed to the committee that the key question before it is what conduct is acceptable to one another with your own House membership and, to that end, three members of the committee in the past 2010 session did invoke Rule 38. So, as the committee contemplates what actions to take and when to take them as fellow House members, it may be worthwhile contemplating when and why Rule 38 was invoked within your personal circumstances.

Representative Jaquet commented that she thought that review would be interesting at this point in the meeting for any members who did invoke Rule 38, to indicate the circumstances under which they acted. **Mr. Kane** added that Rule 38 does not require anything other than a disclosure that under Rule 38 there may be a conflict of interest. The standard under Rule 38 is exceptionally lenient because a member need only disclose that there may be a conflict of interest and is then entitled to fully participate in debate and the vote. **Mr. Kane** believes the key component of Rule 38 is that fellow members say, at least let me know what motivates you; if it's of such an interest that it's going to interfere with representation of the public interest or would cause someone to question whether or not you're representing the public interest or your own interest. In that respect, he believes that the real question from the members is to say at least let me know why you are saying what you're saying. To that end, **Mr. Kane** said that it is a workable standard.

Representative Wills said he had a long career with law enforcement, so when legislation involves that, he wants his constituents to know that he is voting for them and not for his personal agenda when he invokes Rule 38.

Representative Raybould said he invoked Rule 38 on an appropriations bill for funding for a school for veterinary medicine at Washington State University because he had a grandson attending that specific school in veterinary medicine and he didn't want any questions as to his motives.

Representative Sayler said he invoked Rule 38 on an education issue since his wife was a teacher and he thought that appropriate.

Representative Killen said he invoked Rule 38 on HCR 42, the PERSI cost of living adjustment, sharing that he does receive a PERSI stipend for public service. His prior professional training was that appearances of conflicts are every bit as important, if not more important, than actual conflicts. As an attorney, he said that complaints brought against other attorneys sometimes had nothing to do with actual ethical violations but had every bit to do with appearances of violation. Unfortunately, that is what the public is probably going to see, not being aware of all the nuances in the details. They are going to remember what they read in the newspapers or hear on the news. He is very careful to not put himself in a position where someone on the outside may not know the details and perhaps see an action as a conflict.

Representative Killen said he has no exception to the position regarding taxation that

Representative Hart has taken; if he feels strongly about it, then more power to him. However, he expressed concern about **Representative Hart's** position that perhaps he should have been more sensitive about the public perception as a whole, because that is what reflects on the entire House.

Chairman Loertscher summarized that the committee was charged with deciding whether the committee believes that Rule 38 was not properly invoked, inviting further discussion.

Representative Stevenson said he was trying to weigh between what the complaint charged and perception, agreeing totally that perception is reality in this avocation to which they were elected. However, he said he was not sure that the complaint as filed is specific enough that he feels comfortable in bringing action before this committee. He thinks there are things that could be done, though perhaps not within the purview of this committee. Having made that comment, **Representative Stevenson moved to dismiss the charges in the complaint against Representative Hart, due to lack of specificity, with respect to Rule 38, seconded by Representative Raybould.**

Representative Jaquet, in opposition to the motion, stated that **Representative Killen** said what she had been grappling with, wondering if **Representative Stevenson** perhaps thinks that there should be more specifics with regard to Rule 38. She thinks that **Representative Killen** summarized well what is going on, and that to dismiss the complaint at this time creates a perception on the part of the public that there is no misconduct here, that the House has not been violated, and that this type of behavior is tolerated. She believes that legislators should be sensitive to the reactions of the public and that a dismissal of **Representative Hart's** bad behavior is a reflection of the credibility of the body, adding that she could not vote to dismiss the charges. **Representative Jaquet** said she regretted that the first part of the complaint could not be discussed.

Representative Jaquet offered a substitute motion to reprimand Representative Hart and to ask the Speaker to remove Representative Hart from the House Revenue and Taxation Committee as a sanction, seconded by Representative Killen.

Chairman Loertscher asked in what specific instances, as the committee had reviewed the documents before them and the evidence presented here, Rule 38 should have been invoked. **Representative Jaquet** said that in listening to instances by her fellow committee members as to when they invoked Rule 38, what she heard was them stepping forward not with specifics, perhaps not a black and white conflict, but rather a gray area, and she believes that **Representative Hart** should have indicated a conflict during the discussion of the temporary rule and should have opted out of being on that committee; she thinks he, at least, should have indicated that he was in litigation with the State Tax Commission when introducing a personal bill, even though not voted upon, which creates a perception of a conflict. She believes that **Representative Hart's** behavior has reflected badly on the Legislature; she believes that this committee needs to take some action to tell **Representative Hart** that he could have been more aboveboard and that he could have invoked Rule 38 very easily and gone forward, but he did not do that. What makes her sad about this discussion today, she said, is that it appears to be a partisan issue. She referred to the Legislative Council, where **Senator Davis** was always concerned about the credibility of the Legislature so as to not tarnish that reputation, making sure

that legislators are respected in the eyes of the people. She believes that dismissing these charges diminishes the respect that the Legislature should have. She believes a reprimand would be appropriate at this time and thinks that the public would feel comfortable with this, even though some people have said that **Representative Hart** needs to be expelled. She believes this to be going further than this committee wants to go, but she does believe that a formal reprimand is appropriate.

Chairman Loertscher reiterated that the question remains: “Has **Representative Hart** violated Rule 38?” Has there been sufficient evidence provided in this meeting to lead the committee to believe that proper disclosures were not made in **Representative Hart**’s case?

Representative Saylor said he believed that **Mr. Kane** stated this well and that it is a matter of what conduct is acceptable to the House. In reference to Rule 38, he believes that it is their responsibility individually as legislators to invoke Rule 38 whenever there may be even a perception of a conflict of interest, even though technically it may not be required. Erring on the side of caution has credibility. He said that he believes **Representative Hart** has not done that with regard to these issues, and he believes that a reprimand would be appropriate, even though there is no specific violation of Rule 38. He believes that **Representative Hart** should be held accountable for not invoking Rule 38, when he perhaps should have.

Chairman Loertscher said that if the committee does not have specific instances where Rule 38 has been violated, just because it looks like Rule 38 should have been invoked, what that really creates is a situation where probably on the House floor half the time would be spent declaring a potential conflict with every decision that is made as a legislator. He wondered if there is anything specific, saying that the one that comes the closest is the discussion on HB 436, but even that would at least technically not fly because **Representative Hart** does not have those direct issues before the State Tax Commission. **Chairman Loertscher** said he was struggling with specifics according to House rules, even one time, and asked for help if he was not seeing this Rule 38 issue clearly.

Representative Wills said he has been struggling for a considerable amount of time, as he believes everyone has, and he believes the real issue is sensitivity; when do we as legislators go that extra mile to make sure all bases are covered to make sure nobody can come back to say we didn’t do things properly. There is great validity in sensitivity, and he believes that the real issue and the charge of the committee from **Chairman Loertscher** and **Mr. Kane** is black and white, absolute. The sensitive appearance is that perhaps **Representative Hart** didn’t always do in committee some of the things he probably should have. Appearance of conflict may be omnipresent in **Representative Hart**’s case because of the challenges he has made under the Constitution. With that being set aside, **Representative Wills** said that caution must be exercised not to make judgment calls on gray areas, since the legislative process could be stopped if Rule 38 is invoked constantly.

Representative Wills summarized that the one thing that has bothered him more than anything else is the word “partisanship,” which was eluded to in this meeting; he does not believe this is a partisan issue, but has to do with the body as a whole. He doesn’t think it should be a partisan issue, regardless of what a committee member’s vote is, and he doesn’t believe it should be labeled as such. He said he respects everyone on this committee, and he hoped that everyone

could rise above that. **Representative Wills** said he does believe that the committee's decision today does not denigrate what members believe on an individual basis, whatever their decision is. **Representative Wills** believed that removing **Representative Hart** from the House Revenue and Taxation Committee could come from the Speaker or from **Representative Hart** himself, and he thinks that is where that decision should reside. With that, **Representative Wills** said that he does not see that there were absolute specifics in the allegation and no foundation for anything but the original motion, a dismissal of all charges. Had HB 454 come out or been before the committee, he said that would have been different. He said that he hopes what comes from this complaint is a wake-up call for all legislators to be very careful about appearances.

Representative Jaquet referred to the complaint letter from **Representative Rusche** that stated: ". . . there is at the least a perception of a conflict of interest which has not been acknowledged . . ." She said that the complaint refers to "perception" of a conflict of interest, and she said she doesn't believe it had to be a black and white issue, with all due respect to **Representative Wills**. She believes the question is whether **Representative Hart** should have invoked Rule 38 and the perception is that he should have invoked Rule 38. It troubles her that this issue is being narrowed down; the perception is that he should have invoked Rule 38.

Representative Wills asked where the perception would be that Rule 38 should have been invoked, since he has heard nothing that clarifies that Rule 38 should have been invoked at any given point in the committee.

Representative Raybould said he didn't believe this committee should be acting on perceptions; he believed they should be acting on facts and he had heard no facts that have come up that declared that **Representative Hart** violated Rule 38. He believes that the biggest perception is about **Representative Hart**'s tax liabilities, which is not the business of this committee, that being between the State Tax Commission and **Representative Hart** and his attorney. He said he believes that facts should be looked at carefully and not the perception of what may or may not be; he said he supported the original motion to dismiss.

Representative Stevenson asked **Representative Jaquet** on what specific legislation does she believe that **Representative Hart** should have invoked Rule 38, or even perceived that he should have. **Representative Jaquet** answered that she believes there is a perception of a conflict of interest, basically the pattern of bills, and that she sees the use of legislative privilege that is an umbrella over how she looks at what is going on here. Since the committee cannot do that, it makes it more difficult for the committee to make a decision. Under that umbrella, she thinks there was a pattern of perception of a conflict of interest, even without being able to name specifics. HB 454 was a personal bill; she was uncomfortable with the administrative tax rule and **Representative Hart**'s participation with that rule, as well as his desire to abolish the income tax. Those three are perceptions, as well as when he presented the silver bill. She said it would have been appropriate for **Representative Hart** to give an explanation so that there would be an understanding as to his involvement or noninvolvement when that bill was presented. She believes that Rule 38 should have been invoked to clarify **Representative Hart**'s previous involvement.

Representative Saylor referred to many news articles regarding **Representative Hart**, stating that **Representative Hart**'s actions have created the perception of a conflict of interest; the

overall pattern of actions and of not invoking Rule 38 more judiciously perhaps has created the perception of a conflict of interest.

Mr. Kane clarified several concepts for the committee regarding the issue of perception. He said that he believed it essential for the committee to recognize that whatever decision they come to is going to be used in the future in the House as a benchmark for when to declare a conflict and the use of Rule 38. One of the dilemmas for the committee, he said, was why a conflict is declared and at what point. In essence, he said that three pieces of legislation were before the committee, Rule 500, HB 454, and HB 436; the real key for the committee being if they wanted Rule 38 to be declared, identify one of those pieces of legislation and then say as a committee, "We believe as a committee that **Representative Hart** should have declared Rule 38 based on a specific piece of legislation." **Mr. Kane** said that otherwise, the committee gets into an area that could be difficult for the House to reconcile, and a great deal of time could be spent declaring conflicts. It could then become impossible to determine who actually does have a conflict and what the actual motivation is. It is one of those areas that the committee needs to identify clearly, where specifically Rule 38 should have been declared or not declared, because the House will look at these proceedings in future sessions when Rule 38 should be invoked.

Chairman Loertscher said that it might be beneficial for the committee to specifically discuss those three pieces of legislation, Rule 500 (January 25, 2010), and discussion of that rule is on the back of the page, Tab 13 in the packet, as well as HB 454 and HB 436.

There was a short discussion on the specifics of these three pieces of legislation between the committee members. **Mr. Kelso** interjected that the decision by the Tax Commission was already made and binding on **Representative Hart** and, as **Mr. Shaner** from the Tax Commission pointed out, if **Representative Hart** prevails on an issue at the appeals, it would not go back to the Tax Commission; therefore, the discussion is not relevant to **Representative Hart**. **Representative Jaquet** said she had heard him say this before; she emphasized that perhaps the public would not understand that, and even though not relevant to **Representative Hart's** appeal, participating in a discussion on this kind of rule creates the perception that he should have declared a conflict, that being the point she was trying to make. **Chairman Loertscher** said that this no longer concerns **Representative Hart** personally, thus creating the question: "Where is the conflict?"

Representative Saylor asked for clarification if Rule 500 or 501. **Mr. Kelso** was asked if he addressed Rule 501 and not Rule 500; **Mr. Kelso** answered that he was addressing the rule raised by **Representative Jaquet**, Rule 501, which has to do with the appeal and was what **Mr. Shaner** was addressing earlier. **Representative Jaquet** clarified that she had been talking about Rule 500.

Representative Killen said he was in some disagreement with what he was hearing from the State Tax Commission lawyers on the potential consequences of a successful appeal. He said he would not refer to details, but his understanding was that it covered multiple years, deficiencies, in which one could win on some and lose on other years, so results could vary. As he read the memorandums from the attorneys involved, they seem to deal with whether the appeal had been timely submitted, not with the merits of the appeal; if they were timely submitted, then he believes they would be "back in the saddle" again and the appeal proceeds forward. He said that

then all those issues and the potential appearance of a conflict of interest are still on the table, if there is a successful appeal and they don't go away. He asked if he was missing something.

Mr. Kane responded that he didn't know the details of the case and he deferred to **Mr. John**, State Tax Commission. **Mr. John** answered that the first thing to be decided in this case is whether the appeal was timely or not and that is the constitutional issue; after that, depending on the ruling, either the appeal was not timely or it was timely. If ruled that the appeal was timely, then they will deal with the merits at that time. It was his understanding that portion had not been briefed.

Mr. Kelso pointed out that if the ruling on the constitutional requirement does not apply, then **Representative Hart** loses and that is the end of it. If they state that the mandatory requirement, Section 7, Article III does apply, it goes to a resolution just like on the other matter. Whether **Representative Hart** prevails or loses, it will **not** go back to the Tax Commission.

Chairman Loertscher said that as it pertains to Rule 500, **Representative Hart** does not assume an adversarial position with the Tax Commission; he said he was having a difficult time deciding how that would be a conflict of interest, when in fact **Representative Hart** agrees with the Tax Commission in the way they proposed Rules 500 and 501. A brief discussion continued with regard to the pieces of legislation and Rule 38.

Representative Jaquet said that she had a problem with assuming that everything is copasetic because **Representative Hart** voted for Rules 500 and 501. She said that there has been an employee within the Tax Commission who believes these settlements were inappropriate and a complaint has been filed. She believes, with regard to settlements, there is an issue whether these rules are too lenient in implementing the legislation that came before the Legislature in 2008. To her, if someone is involved in a process with the State Tax Commission and dealing with Rules 500 or 501, no matter how one votes, there is a conflict. To her, the fact remains that if you are involved with the Tax Commission, it may be perception or appearance, but to her this is pretty black and white; she believes that **Representative Hart** should have excused himself from voting on Rules 500 and 501.

Chairman Loertscher restated the substitute motion by **Representative Jaquet**, seconded by **Representative Killen**, to reprimand **Representative Hart** and to ask the Speaker to remove **Representative Hart** from the House Revenue and Taxation Committee as a sanction. A roll call vote was requested and the substitute motion failed with 3 ayes and 4 nays. **Chairman Loertscher**, **Representatives Stevenson**, **Raybould** and **Wills** were recorded as voting "no," and **Vice-Chair Jaquet** and **Representatives Sayler** and **Killen** voted "yes."

The original motion, made by **Representative Stevenson**, seconded by **Representative Raybould**, was to dismiss the charges in the complaint against **Representative Hart**, due to lack of specificity, with respect to Rule 38. The original motion passed by roll call vote with 4 ayes and 3 nays. **Chairman Loertscher**, **Representatives Stevenson**, **Raybould** and **Wills** were recorded as voting "yes," and **Vice-Chair Jaquet** and **Representatives Sayler** and **Wills** voted "no."

Chairman Loertscher concluded the meeting by stating that the committee still had one matter before it that could not be dealt with, due to the pending court case; he said it might be well for the committee to wait until there is a decision on that court matter. **Chairman Loertscher** said that a future meeting of the Ethics Committee would be subject to the call of the Chair.

Chairman Loertscher adjourned the meeting at 11:30 a.m.